

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

<hr/>		X
D. JOSEPH KURTZ, Individually and on	:	Civil Action No. 1:14-cv-01142
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
vs.	:	DECLARATION OF MARK S. REICH IN
	:	SUPPORT OF PLAINTIFF'S MOTION FOR
	:	CLASS CERTIFICATION AND
KIMBERLY-CLARK CORPORATION, et al.,	:	APPOINTMENT OF CLASS
	:	REPRESENTATIVE AND CLASS
Defendants.	:	COUNSEL
<hr/>		X
		<b>FILED UNDER SEAL</b>
		(Leave to File Under Seal Granted February
		27, 2015)

I, MARK S. REICH, declare, under penalty of perjury:

1. I am a partner with Robbins Geller Rudman & Dowd LLP and counsel to plaintiff D. Joseph Kurtz ("Plaintiff") in the above-captioned action. I submit this Declaration in support of Plaintiff's Motion for Class Certification and for the purpose of placing before the Court certain documents referenced and/or as exhibits in Plaintiff's Omnibus Memorandum of Law in Support of Plaintiff's Motion for Class Certification.

2. Attached hereto as Exhibit A is a true and correct copy of an email thread, including dates of September 10 and 11, 2013 email, regarding "Subject: Kirkland Flushable Wipes" between representatives of Nice-Pak and representatives of Plainfield Area Regional Sewerage Authority, bearing bates numbers COSTCO00015240 - 41.

3. Attached hereto as Exhibit B is a true and correct copy of an email thread, including dates of June 5, 2013 and January 4, 2012, regarding "Subject: New KS MTT graphics" between representatives of Kimberly-Clark and including label graphics attachments, bearing bates numbers COSTCO00013757 - 61.

4. Attached hereto as Exhibit C is a true and correct copy of a summary of Kimberly-Clark Corporations' Cottonelle brand label changes, bearing bates numbers KCC-Kurtz0019746 - 50.

5. Attached hereto as Exhibit D is a true and correct copy of a list of Kimberly-Clark Corporation's Cottonelle Flushable Wipe product changes bearing bates numbers KCC-Kurtz0019775 – 83.

6. Attached hereto as Exhibit E is a true and correct copy of an email thread, dated April 12, 2013, regarding “Subject: Flushable wipes labeling” between representatives of INDA, Kimberly-Clark, Proctor & Gamble, Rockline, and Nice-Pak, among others, bearing bates numbers COSTCO00010403 - 04.

7. Attached hereto as Exhibit F is a true and correct copy of a minuscrit version of the transcript of the deposition of Kim Babusik.

8. Attached hereto as Exhibit G is a true and correct copy of a minuscrit version of the transcript of the deposition of David Powling.

9. Attached hereto as Exhibit H is a true and correct copy of an email thread, dated May 3, 2011, regarding “Subject: KS Moist Flushable Wipes” between Kim Melsheimer (of Nice-Pak) and Kim Walior (of Costco), bearing bates numbers COSTCO000003142.

10. Attached hereto as Exhibit I is a true and correct copy of a minuscrit version of the transcript of the deposition of Jeff Hurley.

11. Attached hereto as Exhibit J is a true and correct copy of “Kimberly-Clark Corporation's Flushable Wipe product changes (2010-2014)” as prepared and produced by defendant Kimberly-Clark, bearing bates numbers KCC-Kurtz0019341 - 42.

12. Attached hereto as Exhibit K is a true and correct copy of an email exchange, dated July 19, 2013, regarding “Subject: KC Substrate” between David Powling (of Kimberly-

Clark) and Robert Villee (of Plainfield Area Regional Sewerage Authority), bearing bates numbers KCC-Kurtz0015653.

13. Attached hereto as Exhibit L is a true and correct copy of an email thread, including dates November 15 and November 6, 2011, regarding “Subject: Flushable Article from INDA” and “Subject: Pumps & Systems web article on Moraga study and NSF cert” between representatives of INDA, Procter & Gamble and Kimberly-Clark, among others, bearing bates numbers KCC-Kurtz0001825 - 31.

14. Attached hereto as Exhibit M is a true and correct copy of January 2013 Nice-Pak, Inc. statement regarding flushability bearing bates numbers COSTCO00016582 - 83.

15. Attached hereto as Exhibit N is a true and correct copy of May 29, 2012 letter from American Public Works Association to Mr. Richard DiCerchio, Senior Executive Vice President, COO, Costco Wholesale Corporation, bearing bates numbers COSTCO00014337 - 38.

16. Attached hereto as Exhibit O is a true and correct copy of an email thread, including dates June 15 and June 16, 2011, between representatives of Kimberly-Clark regarding “Subject: Wastewater temperature swings,” bearing bates numbers KCC-Kurtz0012291.

17. Attached hereto as Exhibit P is a true and correct copy of an email thread, including dates January 6 and January 9, 2012, regarding “Subject: State Proposed Laws regarding flushable” between representatives of Kimberly-Clark, Rockline, INDA, and Procter & Gamble bearing bates numbers KCC-Kurtz0015503 - 07.

18. Attached hereto as Exhibit Q is a true and correct copy of list of homeowners’ complaints relating Costco products bearing bates numbers COSTCO00019864 - 95.

19. Attached hereto as Exhibit R is a true and correct copy of November 2, 2011 email from Jenni Hibbert to various representatives of Kimberly-Clark, regarding “Subject: October 2011 Plumbing Payments”, including attachments thereto, bearing bates numbers KCC-Kurtz0019126 - 201.

20. Attached hereto as Exhibit S is a true and correct copy of a minuscrit version of the transcript of the deposition of Amanda O'Connor.

21. Attached hereto as Exhibit T is a true and correct copy of Nice-Pak's October 20, 2014 North America Product Complaint Handling, Initial Risk Assessment, and Complaint Investigation bearing bates numbers COSTCO00000368 - 77.

22. Attached hereto as Exhibit U is a true and correct copy of an email thread that is dated July 17, 2013 regarding "Subject: FCC website FAQs" by and between members of Kimberly-Clark including accompanying attachments, bearing bates numbers KCC-Kurtz0006782 - 85.

23. Attached hereto as Exhibit V is a true and correct copy of June 4, 2013 email from Kim Walior (of Costco) to Kim Melshemier (Nice-Pak) regarding "Subject: KS Wipes" and "the incidence of serious problems with the item", bearing bates numbers COSTCO00016983.

24. Attached hereto as Exhibit W is a true and correct copy of a minuscrit version of the transcript of the deposition of Kim Walior.

25. Attached hereto as Exhibit X is a true and correct copy of email thread including dates July 10 and July 15, 2013, regarding **REDACTED**

KCC-Kurtz0019280 - 81.

26. Attached hereto as Exhibit Y is a true and correct copy of "Walior Exhibit 5," an email dated June 20, 2012, from Jason Cline (of Kimberly-Clark) to Kim Walior (of Costco) regarding "Subject: Kimberly-Clark Flushability Update", as well as accompanying attachments/presentation materials, bearing bates numbers KCC-Kurtz00016362 - 73.

27. Attached hereto as Exhibit Z is a true and correct copy of an email thread including dates December 21, 2011 and January 4, 2012 regarding "Subject: Flushability tests"

between representatives of Costco and representatives of Nice-Pak, including accompanying attachment – NSF International Test Report – bearing bates numbers COSTCO00008616 - 22.

28. Attached hereto as Exhibit AA is a true and correct copy of NSF International Test Report regarding (Costco's) Kirkland and (Kimberly-Clark's) Cottonelle nonwoven wipes, bearing bates numbers COSTCO00013604 - 08.

29. Attached hereto as Exhibit BB is a true and correct copy of a minuscrit version of the transcript of the deposition of Plaintiff.

30. Attached hereto as Exhibit CC are true and correct copies of Defense Exhibits L and M, introduced during the deposition of Plaintiff, "Member/Item Activity Inquiry."

31. Attached hereto as Exhibit DD is a true and correct copy of Defendant Costco Wholesale Corporation's First Supplemental Objections and Responses to Plaintiff's First Set of Interrogatories, dated February 25, 2014.

32. Attached hereto as Exhibit EE is a true and correct copy of the firm resume of Robbins Geller Rudman & Dowd, LLP.

33. Attached hereto as Exhibit FF is a true and correct copy of Costco Wholesale Corporation's product label of Kirkland Signature Moist Flushable Wipes, bearing bates numbers COSTCO00003400 - 08.

34. Attached hereto as Exhibit GG is a true and correct copy of Costco Wholesale Corporation's product labeling graphic of Kirkland Signature Moist Flushable Wipes, bearing bates numbers COSTCO00014004 - 06.

35. Attached hereto as Exhibit HH is a true and correct copy of Kimberly-Clark Corporation's product label, of Kleenex Fresh Care Flushable Moist Wipes, bearing bates numbers KCC-Kurtz0003215.

36. Attached hereto as Exhibit II is a true and correct copy of Kimberly-Clark Corporation's product labeling graphic of Kleenex Fresh Care Flushable Moist Wipes bearing bates numbers KCC-Kurtz0003245.

37. Attached hereto as Exhibit JJ is a true and correct copy of an email thread including dates of November 14, and November 18, 2013, regarding "Subject: Questions for Interview" by and between representatives of Kimberly-Clark, bearing bates numbers KCC-Kurtz0011272 - 74.

38. Attached hereto as Exhibit KK is a true and correct copy of "O'Connor Exhibit 18a", including an excel spreadsheet containing sales data compiled by the Nielsen Company, bearing bates numbers KCC-Kurtz0019343.

39. Attached hereto as Exhibit LL is a true and correct copy of "Powling Exhibit 20," and email dated July 16, 2013, from David Powling (of Kimberly-Clark) to other representatives of Kimberly-Clark regarding "Claims Matrix", including accompanying attachments (Copy of Claims Matrix.xlsx), bearing bates numbers KCC-Kurtz0006817.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 27th day of February, 2014, at Melville, New York.

*/s/ Mark S. Reich*

---

MARK S. REICH

CERTIFICATE OF SERVICE

I, Mark S. Reich, hereby certify that on February 27, 2015, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

/s/ Mark S. Reich

MARK S. REICH